(60)

HIGH COURT OF CHHATTISGARH, BILASPUR

D.B: HON'BLE SHRI L.C. BHADOO and
HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

Criminal Appeal No. 785 of 2003

Mahabal

Vs.

State of Chhattisgarh

And

Criminal Appeal No. 617 of 2003

Baba @ Rohit

Vs.

State of Chhattisgarh

JUDGMENT

Judgment for consideration

Sd/-
Sunil Kumar Sinha
Judge

Hon'ble Shri Justice L.C. Bhadoo

I agree

Sd/-
L.C. Bhadoo
Judge

Post for Judgment: 17.10.2007

Sd/-
Sunil Kumar Sinha
Judge

(61)

HIGH COURT OF CHHATTISGARH, BILASPUR

D.B: HON'BLE SHRI L.C. BHADOO and
HON'BLE SHRI SUNIL KUMAR SINHA, J.J.

Criminal Appeal No. 785 of 2003

APPELLANT Mahabal, Son of Khadak Prasad aged about 23 years, Occupation : Business, R/o Shastri Nagar, Contractor Colony, Supela, Bhilai, Distt. : Durg (C.G.)

Versus

RESPONDENT State of Chhattisgarh through P.S. : Supela, Bhilai, Distt : Durg (C.G.)

And

Criminal Appeal No. 617 of 2003

APPELLANT Baba @ Rohit, S/o. Dwarika aged about 26 years, resident of Shastri Nagar, Contractor Colony, Supela, Bhilai, Distt. : Durg (C.G.)

Versus

RESPONDENT State of Chhattisgarh through P.S. : Supela, Bhilai, Distt : Durg (C.G.)

(Appeals under Section 374(2) of Cr.P.C.)

Appearance:

Shri P. Diwakar, Sr. Advocate with Shri Adil Minhaj, Advocate appear for the appellant in Cr.A. No. 785/2003.

Shri D.N. Prajapati, Advocate appears for the appellant in Cr.A. No. 617/2003.

Smt. Anju Ahuja, Dy.Govt. Advocate, appears for the State in both the appeals.

JUDGMENT

(17.10.2007)

Following judgment of the Court was delivered by

Sunil Kumar Sinha, J,

(1) These two appeals have been directed against the judgment of conviction and order of sentence dated 12.3.2003 passed by the Additional Sessions Judge, Durg in Sessions Trial No. 211/2001, whereby, the appellants have been convicted under Section 302/34 of the I.P.C. and sentenced to undergo imprisonment for life.

(2) The facts, in brief, are that on 17.12.2002 at about 10.00 p.m., deceased Lalla @ Vishnu was present in the house of Santoshi @ Malti (PW-14). At that time, accused persons, total 5 in number, armed with deadly weapons like sword, knife, *Gandasa* etc., entered the house of Santoshi @ Malti, caught hold of deceased Lalla and attacked him with the said weapons. Lalla cried for help to Santoshi, on which, she intervened and said to accused Baba @ Rohit for not assaulting him but they did not hear her and took the deceased with them. Baba assaulted Santoshi also. Santoshi was kept in the house and the door was closed from outside. In the morning, Santoshi told the story to the father of the deceased namely Meghuram. On 18.12.2002 at about 7.45 a.m., Meghuram came to know that the body of the deceased was lying near the house of Shukla. On this, *Merg* intimation (Ex.-P/16) was given, based on which, the First Information Report (Ex.-P/15) was recorded. The Investigating Officer left for scene of occurrence, after giving notice (Ex.-P/8) to *Panchas*, he prepared inquest on the body of the deceased under Ex.-P/9. The dead body of the deceased was sent for post-mortem examination. The post-mortem was conducted by Dr. B.K. Sao (PW-1), who prepared his report Ex.-P/1. He noticed multiple incised wounds of different sizes all over the body including scalp, face, neck, chest, back, left upper arm, right upper arm, left hip bone and other parts of the body. According to his opinion, the injuries were caused by sharp edged weapons. Chest and abdomen were full of blood and cause of death was shock and hemorrhage, as a result of ante-mortem injuries. In further investigation, after taking into custody, memorandum of accused Rajesh was recorded under Ex.-P/10; memorandum of accused Suresh was recorded under Ex.-P/12; memorandum of accused Mahabal was recorded under Ex.-P/19 & memorandum of accused Saheed @ Kalu was recorded under Ex.-P/21 and in pursuance of above memorandums, one sword was seized from possession of accused Suresh under Ex.-P/14, another sword was seized from possession of accused Mahabal under Ex.-P/20 & a knife was

seized from possession of accused Saheed @ Kalu under Ex.-P/22. These seized weapons were sent for their examination to Dr. B.K. Sao (PW-1), who gave his report Ex.-P/2, P/3 & P/4. Blood stained soil and plain soil were seized from the place of occurrence under Ex.-P/5, one pair of sleepers (*Hawai Chappel*) was also seized from the place of occurrence under Ex.-P/6 & blouse of Santoshi (PW-14), stained with blood, was seized under Ex.-P/7. Site plan was prepared under Ex.-P/18. The seized articles were sent to Forensic Science Laboratory (FSL), Raipur under Ex.-P/25, from where a report Ex.-P/27 was received. According to FSL report, blood stains were not found on article B, F & H i.e. on the plain soil, on the full pant seized from accused Mahabal and on the sword seized from accused Suresh but blood stains were found on all other articles including weapons seized from Mahabal (article E), blouse seized from Santoshi (article C) and Knife seized from accused Saheed (article G).

(3) After completion of the usual investigation, the charge-sheet was filed in the Court of Judicial Magistrate, First Class, Durg, who in turn committed the case to the Sessions Judge, Durg, from where it was received on transfer by Additional Sessions Judge, who conducted the trial and convicted and sentenced the accused/appellants as aforementioned. However, the other 3 co-accused persons namely Saheed Khan, Suresh & Rajesh were acquitted.

(4) Learned counsel for the appellants have not disputed the homicidal death of the deceased Lalla @ Vishnu. Moreover, it comes in the evidence of Santoshi @ Malti (PW-14) that on the fateful day, all the 5 accused persons entered into her house and after closing the door from inside, they assaulted the deceased. Mahabal was armed with sword, Baba was armed with *Gupti* and another accused was armed with knife (like a dagger) and two other accused persons were unarmed. All attacked Lalla with the said weapons. When she tried to intervene, Mahabal stopped her on the point of sword, Lalla had

received many injuries and was crying for saving him. Thereafter, he was dragged by the accused persons from her house. It also comes in the F.I.R., lodged by Meghuram (PW-10) that when he went towards the gutter near the house of one Shukla, he saw that the dead body of his son was lying there and there were injuries on his neck, hands & back portion of scalp. The body was lying in pool of blood. This evidence is further corroborated by the evidence of Dr. B.K. Sao (PW-1), who conducted the post-mortem on the body of the deceased and had noticed as many as 50 to 55 wounds (almost all incised wounds) all over the body of the deceased. Even the left 9th & 10th ribs were fractured; stomach was also cut having 2 incised wounds; there were 2 incised wounds on the liver; it was ruptured & there was a cut injury on the spleen. Even ulna bone was cut; 2nd, 3rd, 4th, 5th right metacarpal bones were also cut; metacarpal bone of middle finger was also cut and upper portion of thumb was completely removed by the cut injury. There were 3 injuries on the lower side of chest and they had injured the lungs also. He has categorically stated that all the injuries were ante-mortem in nature and were caused by sharp edged weapons. As stated above, he has given his opinion that the cause of death was shock and hemorrhage as a result of ante-mortem injuries. He has proved his post-mortem report (Ex.-P/1). Therefore, by above ocular and medical evidence, it is established that the death of the deceased was homicidal in nature.

(5) So far as complicity of the appellants in crime in question is concerned, learned counsel for the appellants have argued that PW-14, Santoshi @ Matli is not reliable witness, as she has not been corroborated on material facts by Meghuram (PW-10), father to the deceased. They argued that she stated that she had informed about incident to Meghuram by taking the names of some of the assailants but their names do not find place in the F.I.R. (Ex.-P/15) lodged by Meghuram and it comes there that unknown persons have committed murder of the deceased. They

also challenged her reliability on the ground that she did not disclose the matter immediately to the neighbours and her conduct appears to be unnatural. About Baba @ Rohit, it has been very specifically argued that there is not seizure of weapon, therefore his complicity in crime in question has not been established.

(6) On the other hand, learned counsel for the State supported the judgment of conviction and order of sentence passed against the appellants.

(7) We have heard the learned counsel for the parties at length and have also perused the records of the Sessions Trial.

(8) A perusal of the impugned judgment would show that out of 5 accused persons, 3 have been acquitted by the trial Court. The trial Court has assigned the reason for their acquittal vide Para-23. It has been said that since the other 3 accused persons were not named by Santoshi (PW-14) and she had said that she can identify them but the police did not conduct the identification parade and 2 other witnesses taking their names namely Vijay Kumar (PW-11) and Mukesh Kumar (PW-12), have not supported the case of prosecution, therefore, in absence of their names in the 161 & 164 Cr.P.C. statements of PW-14 and further in absence of test identification parade of these accused persons, they were entitled for benefit of doubt.

(9) So far as present appellants are concerned, they have been convicted on the basis of evidence of Santoshi @ Malti (PW-14). Santoshi @ Malti has deposed that on the fateful night, the deceased was sitting on a cot in her house. At that time, all the 5 accused persons entered into her house and closed the door. Mahabal was armed with sword, Baba was armed with *Gupti* and one of the other 3 assailants was armed with a knife (like dagger) and other 2 assailants were unarmed. All the accused persons started assaulting Lalla with the arms kept by them. When she tried to intervene, she was beaten by accused persons but who gave beating, she does not

remembered. She has further deposed that Mahabal had stopped her on the point of sword. Huge quantity of blood was coming out from the body of the deceased and he was crying as "save-save", he came behind her and took support of her back. Deceased Lalla was saying that he was going to marry and he has corrected himself, this he was saying by taking the name of Baba. Thereafter, the door was opened by the accused persons and after taking Lalla with them, they closed the doors from outside. On the next morning at about 7.00 a.m., she tried to open the door and she found that the door was opened. Then, she went to the house of Lalla for telling his mother and father, thereafter, the father of the deceased-Lalla informed the police. Her blouse was stained with blood, which was seized by the police.

(10) If we look into the evidence of Meghuram (PW-10), he has not supported the story given by PW-14-Santoshi, as he has turned hostile. Even he denied about the accused person and said that he does not know Santoshi Bai and he does not know as to who killed his son. He was put to cross-examination by AGP and he has denied the fact that Santoshi had told him that his son was assaulted with sword and knife by Mahabal, Baba @ Rohit and 3 other boys. He has denied the contents of his police case diary statement, portion A to A, in this regard. Even in the F.I.R., the names of the assailants have not been mentioned by this witness. Therefore, two situations merge from the evidence of this witness. No.1 either this witness was not briefed by the eye witness, PW-14 before he had gone to lodge the F.I.R., or, No.2 he is deliberately not taking the names of the accused persons though it was disclosed to him by the eye witness, Santoshi Bai (PW-14).

(11) For appreciation, in this regard, if we look into the evidence of Santoshi Bai as also her police case diary statement (Ex.-D/2) and her statement before the Magistrate recorded under 164 Cr.P.C. (Ex.-D/1), it comes in all 3 statements that after the incident, in the morning, she had disclosed the story to

the family members of the deceased. In 164 Cr.P.C. statement, she stated that the story was disclosed to the mother of the deceased and in 161 Cr.P.C. statement, she disclosed that the story was told to his father. Therefore, as far as PW-14, Santoshi is concerned, there is consistent evidence given by her regarding involvement of 5 assailants and also regarding identifying 2 of them namely Baba @ Rohit and Mahabal. The names of these 2 accused persons are coming in her two previous statements (161 & 164 Cr.P.C.), which she has also taken in her Court evidence. Therefore, if this portion of evidence of this witness, which is consistent, is not supported by the evidence of PW-10, who has been declared hostile because he has resiled from his police case diary statement pertaining to the disclosure of the fact by Santoshi (PW-14), then, in appreciation, the evidence of PW-14 has to be given weihtage holding that PW-10 has turned hostile and he is deliberately not supporting the case of prosecution.

(12) As far as omission in the F.I.R. is concerned, it appears that by the time, Meghuram (PW-10) had gone to the police station to lodge the F.I.R., he may not have met with Santoshi Bai (PW-14). A perusal of the F.I.R. would show that the information was lodged in the police station at about 7.30 in the morning, which is at a distance of 2 Kms. from the place of occurrence. Santoshi has deposed that she has disclosed the story to the father of the deceased in the morning but there is dispute regarding the time. Therefore, it appears that before PW-10 had gone to the police station, he had not met with Santoshi Bai but he met with her later on. Hence the names of the assailants are not mentioned in the F.I.R. and the F.I.R. has been lodged on the name of unknown persons but later on, in 161 statement of PW-10, the names of these two person namely Baba @ Rohit and Mahanbal has come along with 3 other assailants, as disclosed by PW-14. This portion in his 161 statement (Ex.-P/31) has been confronted as A to A portion, therefore, we hold that in fact, Meghuram is not reliable witness

and his evidence on the face of evidence of PW-14, cannot be given much weightage.

(13) So far as PW-14, Santoshi @ Malti is concernd, she has been cross-examined at length with respect to situation of her house and also with respect to the other factors as to why she did not disclose the story at once in the night and why she did not raise alarm. About not disclosing the story in night, it comes in her evidence that the door of the house was closed from the outside and any how, when in the morning, she tried to open the door, then, the door was opened and then only she went to the house of the deceased. Therefore, this conduct is explained. About hue and cry, it comes in her evidence that Lalla himself made hue and cry and when she had tried to intervene, she was stopped by Mahabal on the point of sword. Therefore, it appears that hue and cry was made at the time of incident and when these persons left her house, she was frightened and in the night since the door was closed from outside, she could not make any effort. The manner in which the offence is said to have been committed and looking to the 50 to 55 injuries sustained by the deceased, it is clear that the deceased was brutally assaulted by the assailants and if the eye witness PW-14 remained silent for sometime, only on her such conduct her reliability cannot be questioned. As far as question of false implication is concerned, there is no reason with this witness to falsely implicate the accused persons. The defence has not been able to elicit in her cross-examination any such fact which may suggest that she is falsely implicating the accused persons. Her presence cannot be doubted at the place of occurrence because the incident took place in her house and she was bound to remain present there. Her involvement cannot be doubted because when the deceased was in injured condition, he came in her contact for saving his life, and in that process her blouse received blood stains. It was seized by police and was sent for chemical examination, in which, the blood stains were found on the blouse. These are the grounds, which suggest that she was

present at the scene of occurrence and in fact, she had witnessed the occurrence and since no reasons have been assigned for false implication of these two persons, it cannot be held that she has falsely implicated them. The arguments advanced by the learned counsel for the appellants regarding false implication of the accused persons and reliability of this witness cannot be sustained. Moreover, this witness has been corroborated by the evidence of Dr. B.K. Sao (PW-1), who conducted the post-mortem of the deceased and who had also examined the weapons of the offence and had categorically contended in Para-6 of his evidence that the injuries sustained by the deceased could be caused by the said weapons.

(14) The argument of learned counsel for appellant- Baba @ Rohit that there was no seizure of the weapon from this appellant has also no force. Looking to involvement of this appellant on account of evidence of PW-14, Santoshi, failure to seize the weapon of offence from this appellant is not fatal to the prosecution.

(15) In appreciation of over all evidence on record, we find that PW-14, Santoshi, is fully reliable witness and conviction on her sole testimony was possible. Moreover, as stated above, she is supported by medical evidence as also seizure of the blouse and serologist report and other circumstances like offence being committed in her house etc. Therefore, in absence of any evidence of her animosity with the accused persons and further in absence of any reason, explicit reliance can be placed on her evidence. The conviction based upon the testimony of PW-14, Santoshi, cannot be faulted with as she appears to be natural and reliable witness.

(16) In the result, we do not find any substance in these appeals. The appeals are devoid of merits, they are liable to be dismissed and are accordingly dismissed.

Sd/-
Sunil Kumar Sinha
Judge

Sd/-
L.C. Bhadoo
Judge

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